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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,181	12/31/2003	Kenichi K. Yabusaki	03-YAB-117	3401
23843 7590 02/28/2007 FOOTHILL LAW GROUP 777 N. FIRST STREET, SUITE325 SAN JOSE, CA 95112			EXAMINER PARSLEY, DAVID J	
			ART UNIT	PAPER NUMBER
			3643	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/28/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/751,181

Applicant(s)

YABUSAKI, KENICHI K.

Examiner

David J. Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 9-17-06 and this action is final.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the at least one line emanating from a location away from the sides and away from the end section must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claim 30 is objected to because of the following informalities: it does not end in a period. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,704,769 to Hanechak et al.

Referring to claims 16-18, Hanechak et al. discloses a plug-cut bait made of a fish with its head cut off – see for example figures 1-9.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-7, 22-23, 26, 28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0002375 to Legeai et al. in view of U.S. Patent No. 1,525,810 to Hill et al.

Referring to claims 1 and 26, Legeai et al. discloses a removal instrument for making a hollow cavity comprising, an elongate section – at 14, having two straight parallel longitudinal sides – at 22, the elongate section forming a curved groove through the entire length of the elongate section and through the centerline between the longitudinal sides – see 16 in figures 1-3, an end section – at 24,28, the end section extending from the elongate section – see figures 1-3 and tapering gradually from the longitudinal sides to a rounded point such that the curved groove continues through the end section – see figures 1-3, and a plurality of tines – at 32-38, emanating from a surface of the instrument – see figures 1-3, wherein at least one tine of the plurality of tines emanates from the end section – see at 32, wherein at least one tine of the plurality of tines – at 34-38, emanates from a location away from the sides and away from the end section – see figures 1-3, wherein the instrument has a width and a length – see figures 1-3 and paragraph [0049] where the width is 1.18 inches and the length of the spoon portion – at 14 is 3.15 inches and therefore the device of Legeai et al. has dimensions similar to those claimed. Legeai et al.

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does not disclose the tine emanating from the end section is directed away from the rounded point and towards the elongate section. Hill et al. does disclose the tine – the forward most of items b as seen in figures 1 and 4, emanating from the end section – at a, is directed away from the rounded point and towards the elongate section – at d – see figures 1-2 and 4. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Legeai et al. and add the tine emanating from the end section towards the elongate section of Hill et al., so as to allow for the device to easily grasp/engage items during use. Legeai et al. further does not disclose the width as measured between the longitudinal sides is in the range between about one half inch and one inch and the overall length is in the range between 5 inches and 7 inches. Legeai et al. does disclose a device having similar dimensions as seen in paragraph [0049] and applicant does not disclose that the width and length dimensions as claimed are critical to the operation of the invention in view of differing values of the width and length and it appears that the device of Legeai et al. would perform equally as well having the width and length dimensions as claimed in that the device of Legeai et al. has similar dimensions to those as claimed. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Legeai et al. and add the width of about .5 to 1 inch and the length of about 5 to 7 inches, so as to allow for the device to be easily held and operated by a user.

Referring to claim 4, Legeai et al. as modified by Hill et al. further discloses the at least one tine – at b of Hill et al., that emanates from the end section includes a plurality of tines – see the three most forward of b as seen in figures 1-2 and 4 of Hill et al. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Legeai et al. and add the tine

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emanating from the end section towards the elongate section of Hill et al., so as to allow for the device to easily grasp/engage items during use.

Referring to claim 5, Legeai et al. as modified by Hill et al. further discloses the plurality of tines emanate from the surface of the instrument at an angle in the range between about 15 degrees and about 45 degrees – see for example – at b in figures 1-6 of Hill et al. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Legeai et al. and add the tines emanating from the device at an angle of 15 to 45 degrees of Hill et al., so as to allow for the device to easily grasp/engage items during use.

Referring to claim 6, Legeai et al. as modified by Hill et al. further discloses the rounded point on the end section is honed to a blade – at 24,32,33 – see figures 1-3 of Legeai et al.

Referring to claim 7, Legeai et al. as modified by Hill et al. further discloses the instrument is one integral piece – see figures 1-3 and paragraph [0048] of Legeai et al.

Referring to claim 22, Legeai et al. as modified by Hill et al. further discloses the groove comprises a substantially continuously curved groove – see at 16 in figures 1-3 of Legeai et al.

Referring to claim 23, Legeai et al. as modified by Hill et al. further discloses the sides – at 22, comprise straight parallel longitudinal edges of the elongate section – see figures 1-3 of Legeai et al., and wherein none of the plurality of tines – at 32-38 emanate from the edges – see figures 1-3 of Legeai et al.

Referring to claim 28, Legeai et al. as modified by Hill et al. further discloses all of the tines – at b, of the plurality of tines emanate from the end section – at a – see for example figures 1-2 of Hill et al. Therefore it would have been obvious to one of ordinary skill in the art to take

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the device of Legeai et al. as modified by Hill et al. and add the tines emanating from the end section of Hill et al., so as to allow for the device to easily grasp/engage an object.

Referring to claim 30, Legeai et al. as modified by Hill et al. further discloses the instrument comprises plastic – see paragraph [0048] of Legeai et al.

Claims 2 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Legeai et al. as modified by Hill et al. as applied to claims 1 or 26 above, and further in view of U.S. Patent No. 1,997,339 to Olson.

Referring to claims 2 and 29, Legeai et al. as modified by Hill et al. does not disclose the instrument is made of steel. Olson does disclose the instrument is made of steel – see page 2 column 1 lines 60-69. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hill et al. and add the instrument made of steel of Olson, so as to allow for the device to be made durable for repeated use.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Legeai et al. as modified by Hill et al. as applied to claim 1 above, and further in view of U.S. Patent No. 2,533,445 to Finney.

Referring to claim 3, Legeai et al. as modified by Hill et al. does not disclose the instrument is made of stainless steel. Finney discloses the instrument is made of steel/stainless steel – see for example column 2 lines 8-14. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hill et al. and add the instrument made of stainless steel of Finney, so as to allow for the device to be rust-resistant and more durable.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Legeai et al. as modified by Hill et al. as applied to claim 1 above. Legeai et al. as modified by Hill et al. does

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not disclose the body is the bait fish herring. However, it would have been obvious to one of ordinary skill in the art to take the device of Legeai et al. as modified by Hill et al. and add the body being the bait fish herring, so as to allow for the body to be prepared for further processing.

Claims 9-12, 14, 16, 19, 24-25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Legeai et al. in view of Hill et al. and U.S. Patent No. 4,704,769 to Hanechák et al.

Referring to claims 9, 16 and 27, Legeai et al. discloses a method including, inserting an entrails removal instrument into a body, the instrument comprising, an elongate body – at 14, having two straight parallel sides – at 22, the sides comprise straight parallel longitudinal edges of the body comprise straight parallel longitudinal edges of the body – see figures 1-3, the body forming a curved groove between the longitudinal sides – see at 16 in figures 1-3, an end section – at 24,28, the end section extending from the elongate body and tapering to a rounded point – see for example figures 1-3, and a plurality of tines – at 32-38, emanating from a surface of the instrument, wherein at least one tine – at 32, of the plurality of tines emanates from the end section and wherein at least one tine – at 34-38, of the plurality of tines emanates from a location away from the sides and away from the end section – see for example figures 1-3, wherein the entrails removal instrument is adapted to fit into the body and form a hollow cavity when the instrument is inserted into the body, rotated and removed – see for example paragraphs [0051] thru [0062]. Legeai et al. does not disclose at least one tine of the plurality of tines emanates from the end section and towards the elongate body section. Hill et al. does disclose at least one tine – at the forward most of b, of the plurality of tines emanates from the end section and towards the elongate body section – see for example figures 1-2. Therefore it would have been

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obvious to one of ordinary skill in the art to take the device of Legeai et al. and add the at least one tine emanating from the end section of Hill et al., so as to allow for the device to easily grasp/engage an object. Legeai et al. further does not disclose cutting the head off a bait fish with a knife while leaving the body and tail intact, inserting the entrails removal instrument into the fish body to a position forward of the tail and removing the viscera of the fish leaving the body and tail intact with a cavity. Hanechak et al. does disclose cutting the head off a bait fish with a knife while leaving the body and tail intact – see for example figures 1-9, inserting the entrails removal instrument into the fish body – see figure 9, to a position forward of the tail – see figure 9, and removing the viscera of the fish leaving the body and tail intact with a cavity – see for example figures 1-9 and columns 3-4. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Legeai et al. and add the cutting the head off the fish and then creating a cavity in the fish by removing the viscera of the fish of Hanechak et al., so as to allow for the fish to be prepared for eating or further processing.

Referring to claim 10, Legeai et al. as modified by Hill et al. and Hanechak et al. further discloses the entrails remover is inserted at least 2 inches into the fish body – see for example figure 9 of Hanechak et al. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Legeai et al. as modified by Hill et al. and Hanechak et al. and add the device inserted into the fish at least two inches of Hanechak et al., so as to allow for the device to grasp and hold a sufficient portion of the inside of the fish.

Referring to claim 11, Legeai et al. as modified by Hill et al. and Hanechak et al. further discloses moving the entrails removal instrument in a lateral motion – see for example columns 3-4 of Hanechak et al. Therefore it would have been obvious to one of ordinary skill in the art to

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take the device of Legeai et al. as modified by Hill et al. and Hanechak et al. and add the lateral motion of the instrument of Hanechak et al., so as to allow for the device to grasp and hold a sufficient portion of the inside of the fish.

Referring to claims 12 and 16, Legeai et al. as modified by Hill et al. and Hanechak et al. does not disclose the act of rotating includes rotating at least 360 degrees. However, it would have been obvious to one of ordinary skill in the art to take the device of Legeai et al. as modified by Hill et al. and Hanechak et al. and add the act of rotating the instrument 360 degrees, so as to ensure that the entire viscera component can be contacted and removed by the device.

Referring to claim 14, Legeai et al. as modified by Hill et al. and Hanechak et al. does not disclose the body is the bait fish herring. However, it would have been obvious to one of ordinary skill in the art to take the device of Legeai et al. as modified by Hill et al. and Hanechak et al. and add the body being the bait fish herring, so as to allow for the body to be prepared for further processing.

Referring to claim 19, Legeai et al. as modified by Hill et al. and Hanechak et al. does not disclose the bait fish is herring or anchovy or sardine or smelt. However, it would have been obvious to one of ordinary skill in the art to take the device of Legeai et al. as modified by Hill et al. and Hanechak et al. and add the bait fish being herring or anchovy or sardine or smelt, so as to allow for the body to be easily processed for further processing.

Referring to claim 24, Legeai et al. as modified by Hill et al. and Hanechak et al. further discloses the groove comprises a substantially continuously curved groove – see at 16 in figures 1-3 of Legeai et al.

Referring to claim 25, Legeai et al. as modified by Hill et al. and Hanechak et al. further discloses the sides – at 22, comprise straight parallel longitudinal edges of the elongate section – see figures 1-3 of Legeai et al., and wherein none of the plurality of tines – at 32-38 emanate from the edges – see figures 1-3 of Legeai et al.

Claims 13, 15, 17-18 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Legeai et al. as modified by Hill et al. and Hanechak et al. as applied to claim 12 above, and further in view of U.S. Patent No. 6,698,133 to Fricke.

Referring to claims 13 and 17, Legeai et al. as modified by Hill et al. and Hanechak et al. does not disclose inserting at least one fishing hook attached to a fishing line into the hollow cavity and pushing it out through the fish body to form a bait. Fricke et al. does disclose inserting at least one fishing hook attached to a fishing line into the hollow cavity and pushing it out through the fish body to form a bait – see for example figures 10-11. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Legeai et al. as modified by Hill et al. and Hanechak et al. and add the inserting of the fishhook into the fish body of Fricke et al., so as to allow for the device to be used to catch fish.

Referring to claims 15 and 18, Legeai et al. as modified by Hill et al., Hanechak et al. and Fricke et al. further discloses a plurality of fishing hooks – see for example column 7 lines 41-51 of Fricke et al. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Legeai et al. as modified by Hill et al. and Hanechak et al. and add the inserting of the plurality of fishhooks into the fish body of Fricke et al., so as to allow for the device to be used to catch fish.

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Referring to claims 20-21, Legeai et al. as modified by Hill et al., Hanechak et al. and Fricke et al. does not disclose the bait fish is herring or anchovy or sardine or smelt. However, it would have been obvious to one of ordinary skill in the art to take the device of Legeai et al. as modified by Hill et al., Hanechak et al. and Fricke et al. and add the bait fish being herring or anchovy or sardine or smelt, so as to allow for the body to be easily processed for further processing.

Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanechak et al. as applied to claims 16-18 above. Hanechak et al. does not disclose the bait fish is herring or anchovy or sardine or smelt. However, it would have been obvious to one of ordinary skill in the art to take the device of Hanechak et al. and add the bait fish being herring or anchovy or sardine or smelt, so as to allow for the body to be easily processed for further processing.

Response to Arguments

6. Applicant's arguments with respect to claims 1, 4, 5, 22, 23, 26 and 28 have been considered but are moot in view of the new ground(s) of rejection.

Regarding claims 2, 7-12, 14, 16, 19, 24-25, 27 and 29, applicant argues that the dockworker's tool of Hill et al. US 1525810 is non-analogous to the fish eviscerating tool of Olson US 1997339. However, as seen in figures 1-2 of Hill et al. and figures 1-3 of Olson, each device has similar structure being a handheld tool having a handle, elongated shaft and head with prongs and each device has similar function in that the prongs are used to grasp/engage items being bags or bales in Hill et al. and the viscera of a fish carcass in Olson. Therefore it is deemed

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that the devices of Hill et al. and Olson are analogous in that they have similar structure and function.

Regarding claim 7, the Hill et al. reference is not presently being used to disclose the integral one piece structure as seen above in paragraph 5. Further, the combination of the Hill et al. and Olson references is deemed proper in that as stated above both devices have similar structure and function. Further, the attachment of the prongs to the device either being via screws such as in Hill et al. or being formed integral with the device could be used in either of the Hill et al. or Olson references in that the fastening structures/methods used would have been obvious to one of ordinary skill in the art to securely hold the prongs to the device for repeated use.

Regarding claims 3, 6, 8-12, 14, 16, 19, 24-25 and 27, applicant argues that the dockworker's tool of Hill et al. US 1525810 is non-analogous to the poultry eviscerating tool of Finney US 2533445. However, as seen in figures 1-2 of Hill et al. and figures 1-3 of Finney, each device has similar structure being a handheld tool having a handle, elongated shaft and head with prongs and each device has similar function in that the prongs are used to grasp/engage items being bags or bales in Hill et al. and the viscera of a chicken carcass in Finney. Therefore it is deemed that the devices of Hill et al. and Finney are analogous in that they have similar structure and function.

Regarding claims 9-12, 14, 16, 19, 24-25 and 27, the Finney et al. reference is not presently used in the claim rejections as stated in paragraph 5 above.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David Parsley
Patent Examiner
Art Unit 3643